

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

WALMART INC.

v.

U.S. DEPARTMENT OF JUSTICE,  
ET AL.

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CIVIL NO. 4:20-CV-817-SDJ

**ADVISORY CONCERNING HEARING ON DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF JURISDICTION**

Before the Court is Defendants' Motion to Dismiss for Lack of Jurisdiction, (Dkt. #43), which is set for hearing on Tuesday, January 26, 2021. At the hearing, the Court will consider and hear argument on all issues relevant to the Motion. However, the parties are advised that the following issues raised by the briefing and pleadings in this case are of particular interest to the Court in resolving the Motion:

- (1) The specific agency action(s) that Plaintiff Walmart Inc. challenges and that could support the waiver of sovereign immunity under 5 U.S.C. § 702.
- (2) The distinction, if any, between Walmart's challenge to agency action(s) and the programmatic challenges for which, courts have held, Congress has not waived sovereign immunity.
- (3) Whether Walmart must challenge a "final agency action" for a ripe case or controversy to exist in a pre-enforcement declaratory action, and, if so, what may constitute "final agency action" in the context of this case.
- (4) Whether Walmart is attempting to assert a cause of action under *Ex parte Young*, 209 U.S. 123 (1908), and, if so, whether *Ex parte Young* applies in this case.

**So ORDERED and SIGNED this 22nd day of January, 2021.**



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SEAN D. JORDAN  
UNITED STATES DISTRICT JUDGE